

STATE BAR OF MICHIGAN TASK FORCE ON RACIAL/ETHNIC AND GENDER ISSUES IN THE COURTS AND THE LEGAL PROFESSION

EXECUTIVE SUMMARY



Adopted by the State Bar of Michigan
Board of Commissioners
November 21, 1997

*This project was fully funded by the State Bar of Michigan
and a grant from the Michigan State Bar Foundation*





**State
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Michigan**

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**Final Report of the State Bar of Michigan Task Force on Race/Ethnic
and Gender Issues in the Courts and the Legal Profession:
Statement of Adoption**

On November 21, 1997, the State Bar of Michigan Board of Commissioners unanimously adopted the final Report of the Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession in principle subject to a Keller/AO93-5 determination and analysis prior to implementation.

The Board of Commissioners first received the final report of the State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession on September 19, 1997. At that time, a 30-day commentary period was established to enable the Task Force to receive feedback from the organizations and entities responsible for implementation of the 167 recommendations. The Board also requested that a *Keller/AO93-5* analysis be conducted. At its meeting on October 31, 1997, the Task Force members carefully considered each of the numerous suggestions and questions submitted as commentary. Significant modifications, deletions and additions were made to the Report during this time. These changes clearly represent the commitment on the part of the Task Force to produce a fair and balanced Report and to assure that all relevant information be included for the Board's consideration. As a result, the Board voted on November 21, 1997, to fully approve the Report in principle, changing only one substantive recommendation related to mandating the role of prosecutors in procuring personal protection orders. Further, on January 23, 1998, the Board approved all recommendations as *Keller/AO93-5* permissible for the purposes of implementation except gender recommendations VI-15 and VI-16. It is clear that the mandate set forward by then State Bar of Michigan President Victoria Roberts and the Board of Commissioners has been fully and effectively met.

Since 1986, the Michigan judicial system and legal profession have sought to create a diverse and bias-free environment for the constituency we serve. Lawyers and judges have historically stood at the forefront of civil rights initiatives supporting fair and equal application of the laws throughout our state. It has been both our privilege and our responsibility to continue these efforts. As officers of the courts, guardians of the law, advocates for the disenfranchised and teachers of fairness, lawyers and judges must demonstrate the leadership necessary to increase the quality of justice available to our citizens. The State Bar of Michigan in partnership with the Michigan State Bar Foundation, has provided this leadership; actively contributing time, energy and money to the investigation and elimination of discrimination and bias in our profession. Over the last decade, we have joined the Michigan Supreme Court in its unequivocal position that “a fundamental principle of our constitutional government is that discriminatory treatment on the basis of race, gender, economic, class, religion or physical condition cannot and will not be tolerated.”

On behalf of the Board of Commissioners and immediate Past President Victoria Roberts, we wish to express our sincere gratitude to the Co-Chairs, Dawn Van Hoek and Saul Green for their unwavering commitment to this project. They and the entire Task Force and staff are to be congratulated for the quality of their work product, the clarity of their vision and the tenacity of their effort. They have served the State Bar of Michigan, the lawyers and citizens of our state admirably. It is our hope that each individual who reads this Report will emerge more committed to the cause of equality and more certain of the principle expressed in our annual meeting theme this year – justice for some is no justice at all.



Edmund M. Brady, Jr.
President of the State Bar of Michigan



D. Larkin Chenault
Executive Director of the State Bar of
Michigan

January 26, 1998



**State
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September 19, 1997

Victoria A. Roberts
President, State Bar of Michigan
306 Townsend St.
Lansing, MI 48933

Re: Final Report of the State Bar Task Force on Racial, Ethnic and
Gender Issues in the Courts and Legal Profession

Dear President Roberts:

It is our pleasure to submit to you and the State Bar of Michigan Board of Commissioners the final report of the State Bar's Task Force on Racial/Ethnic and Gender Issues in the Courts and Legal Profession, for your adoption and approval. Since you created this Task Force in November of 1996, dozens of dedicated lawyers, judges and support persons have labored mightily to achieve its goals. We believe that the results justify the effort that went into the project.

As many believed, the bench and bar have not yet realized the goals set forth in the 1989 recommendations of the Michigan Supreme Court's Task Forces on Racial/Ethnic and Gender Issues in the Courts. According to our mandate, we set out to prepare a "report card" which would have several functions: identifying recommendations which have been accomplished, identifying recommendations which are not yet realized, and suggesting ways in which progress might yet be made. In our analysis, some individuals and organizations certainly deserve an "A" for their efforts, as represented by the twenty-four percent (24%) of recommendations that have been fully or substantially implemented. The Task Force found that an additional fifty-three percent (53%) of the 1989 recommendations were partially implemented. Unfortunately, of the 167 recommendations in the 1989 Report, fully twenty-three percent (23%) remain unimplemented. In other words, while much has been accomplished, much remains to be done.

Ironically, some of the most difficult goals identified in 1989 have been the most vigorously, and successfully, addressed. Victims of domestic violence now find it easier to obtain both prosecutions of their abusers and civil protection in the form of personal protection orders, due largely to a highly cooperative effort involving the Governor, Legislature, Supreme Court, the private bar, the Prosecuting Attorneys Association of Michigan, and the State Court Administrative Office. On the other hand, the task of identifying qualified women and minorities for appointment to the state's trial courts, mediation tribunals, and fee-generating positions, has not led to appointment of greater numbers.

It is our strong belief that leadership is the key to progress toward the goals identified in both the 1989 Reports, and our 1997 report. The inspired leadership of former Chief Justice Dorothy Comstock Riley, who created the Supreme Court's Task Forces in 1987, placed Michigan at the forefront of states willing to tackle problems of bias in the courts and legal profession. States that have realized real progress in the ensuing decade have done so under leaders unafraid to speak and act on the recommendations made by their "blue ribbon" commissions.

We have laid the groundwork for a renewed statewide commitment to the elimination of bias. We now look to both the State Bar of Michigan and Michigan Supreme Court to provide that crucial leadership. As the most significant first step, and our most important recommendation, the Task Force urges the creation of a Joint Commission on Diversity Issues and the Michigan Justice System, established by the State Bar of Michigan and Michigan Supreme Court to serve on a permanent basis. This Joint Commission should both monitor and work toward accomplishment of the 1989 recommendations, while also expanding the scope of inquiry into new problem areas of racial, ethnic and gender bias which are identified after investigation. It is our unanimous conclusion that without such a commission, Michigan is unlikely to see continued and coordinated progress.

We wish to thank you for the opportunity to serve the bench, bar and citizens of Michigan, who all deserve a justice system which does not discriminate. We also wish to thank the members of the Task Force and the Task Force's special advisors, who threw themselves into a difficult and time-consuming project with extraordinary commitment and vigor. Thanks also to the many individuals and agencies that responded to questionnaires and interviews, as part of the Task Force's information gathering process. Last, and certainly not least, we wish to thank you and the Board of Commissioners, the Michigan State Bar Foundation, and the State Bar of Michigan staff, for the considerable support provided throughout the year.

Sincerely,



Saul A. Green, Co-Chairperson
Task Force on Racial/Ethnic and Gender
Issues in the Courts and the Legal Profession



Dawn Van Hoek, Co-Chairperson
Task Force on Racial/Ethnic and Gender
Issues in the Courts and the Legal Profession

STATE BAR OF MICHIGAN TASK FORCE ON RACIAL/ETHNIC AND
GENDER ISSUES IN THE COURTS AND THE LEGAL PROFESSION

MEMBERSHIP LIST

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Dawn Van Hoek

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Ex officio:

Victoria A. Roberts
D. Larkin Chenault
Nkrumah Johnson-Wynn
Joan Ellerbusch Morgan

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To appreciate the mandate of the State Bar's Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession, it is necessary to step back more than a decade to the 1986 report of the Michigan Supreme Court Citizen's Commission. Under the leadership of Justice Patricia Boyle, this Commission reached the disturbing conclusion that over one-third of Michigan's citizens believed that the Michigan court system discriminated against individuals on the basis of gender, race or ethnic origin.

In response, Michigan Supreme Court Chief Justice Dorothy Riley created, in 1987, two separate task forces – the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts and the Michigan Supreme Court Task Force on Gender Issues in the Courts (1989 Task Forces). After two years of extensive citizen, judicial and lawyer surveys, data collection and research, and 17 statewide public hearings, the 1989 Task Forces concluded that a substantial number of citizens and lawyers believed that bias affects justice, and that their perceptions of bias were often based on reality. These reports and their conclusions revealed that Michigan, like many other states, needed to address the manner in which courts treat those who often lack the power to make their voices heard.

The Reports, which were released in December of 1989, made hundreds of specific findings and recommendations urging individuals, agencies, organizations and courts to address the problems identified. They provided a roadmap for change addressing not only how lawyers treat one another, but also, more importantly, how to improve the quality of justice afforded to victims and litigants.

Eight years later in the fall of 1996, State Bar President Victoria A. Roberts determined that it was time to assess what, if any, progress had been made toward the goals identified in the 1989 Reports. To that end she created the State Bar Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession (State Bar Task Force). With 30 members drawn from diverse legal backgrounds and geographic locations, this group of experienced lawyers and judges was given the following mandate:

- report on the current status of recommendations made in December, 1989, by the Michigan Supreme Court's Task Forces on Race/Ethnic and Gender Issues in the Courts;
- compare the progress in Michigan to that achieved in other states;

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- identify and develop a strategy for collecting information about race, ethnic and gender issues not addressed in the Supreme Court Task Force reports; and
- develop a strategy for monitoring and implementing new and unrealized recommendations.

The initial development of this project was undertaken by Task Force Co-Chairs Dawn Van Hoek and Saul A. Green, State Bar Associate Executive Director for an Open Justice System Nkrumah Johnson-Wynn, and Special Advisor Lorraine Weber, who had served as the Project Director for both 1989 Supreme Court Task Forces. At the outset it was understood that this investigation would be completed during President Roberts' bar year, necessitating that much of the data collection and analysis would have to be done by Task Force members themselves. The Task Force received key administrative and financial support from the State Bar and the Michigan State Bar Foundation.

To meet this ambitious time frame, the 1989 recommendations were divided into five major subject areas: Domestic Violence, Domestic Relations, Bias Within the Court Environment, Bias Within the Profession and the Joint Recommendations of the Gender and Race/Ethnic Task Forces.

It was decided that three basic data-gathering techniques would be used to develop the final report. First, there would be a heavy emphasis on two types of questionnaires directed to all components of the legal system that were the subject of 1989 recommendations. The first questionnaire was designed to determine the degree of implementation of every recommendation made by the 1989 Task Force. The second questionnaire was more general in nature. This questionnaire was designed to gauge the degree of knowledge and the perceptions about implementation of the 1989 Task Force Reports. In all, 816 questionnaires were sent out and 399 were returned. The questionnaires were supplemented, as needed, by focus groups and direct interviews. These focus groups solicited information from individuals and organizations with specialized knowledge and experience of the topic areas. Finally, legal research was conducted to develop a national perspective and research relevant case law, statutory and procedural issues.

Several conclusions were drawn from the results of the preliminary questionnaires and the comments that accompanied them. First, it was clear that the initial publication and dissemination of the 1989 Reports had been effective. Yet, receiving the Reports without an opportunity to examine, review and internalize their contents had not resulted in meaningful awareness. As a result,

respondents understood the overall purpose of the Reports without retaining specific information about the findings and recommendations.

This lack of detailed understanding of the Reports accounted for the belief, on the part of most respondents, that the 1989 Reports had not been effective in addressing issues of gender, race and ethnic bias. Respondents seemed to lack both knowledge and confidence in the ability of the 1989 Reports to adequately address these concerns. Finally, a large majority of respondents did not believe that accountability, resource allocation or follow-up on the implementation of the 1989 Reports was effective.

What then is the strategy for addressing the problem of race/ethnic and gender bias in the Michigan justice system and the legal profession in the future? This report contains a detailed analysis of the status of each recommendation set forth in the 1989 Reports, the level of implementation achieved since that date, and additional recommendations for the future. However, like the 1989 Task Forces, there is unanimous agreement that some goals are so critical to the future of this work that they must be strongly emphasized. It is the conclusion of the State Bar of Michigan Task Force that the 1989 Task Forces' Joint Recommendations correctly predicted the necessary steps to be taken to insure that their reports would not only raise awareness, but would also reduce or eliminate bias and increase citizen confidence in the legal system. Three crucial areas were identified as the foundation for these changes: (1) Ethical Standards and Disciplinary Systems; (2) Education; and (3) Implementation.

Unfortunately, a review of these specific recommendations shows that only one area, judicial education, has been substantially addressed. No recommendations regarding the disciplinary system or the implementation plans were substantially accomplished. Few of the remaining recommendations regarding attorney education, law schools or public initiatives have been adopted. Yet, it is not too late to accomplish the task. Today, in 1997, a task force once again calls for the leadership of our profession to strongly endorse these fundamental changes.

ETHICAL STANDARDS AND DISCIPLINARY SYSTEMS

In 1989 the Task Forces adopted joint recommendations calling for the amendment of the Code of Judicial Conduct, the Michigan Court Rules and the Michigan Rules of Professional Conduct

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to specifically prohibit invidious discrimination and sexual harassment by judges and lawyers. Despite adoption by the State Bar of Michigan Representative Assembly, these provisions were not enacted by the Michigan Supreme Court. The State Bar Task Force endorses the enactment of these amendments as proposed in 1990 by the State Bar of Michigan Representative Assembly. The State Bar Task Force further recommends that the disciplinary systems for attorneys and judges actively promulgate policies and procedures designed to increase the confidence level of the public and the professions regarding their response and intervention in matters related to discrimination and bias.

EDUCATION

The 1989 Reports concluded “education is an essential tool in efforts to eliminate race/ethnic and gender bias from the Michigan court system ... An educational approach is appropriate because it focuses on understanding, not on blame.” As a result, they proposed broad reforms in the areas of education for judges, court personnel, attorneys, law students and the public. In each instance they stressed the need for a broad spectrum of educational strategies. In the last eight years much has been done in the area of education, yet there are still wide gaps in the awareness and exposure of most of the profession to the issues of race, ethnic and gender bias. As a result, the State Bar Task Force reinforces the call to adopt the 1989 recommendations, with some modifications.

All members of the justice system should either receive or have access to the 1989 Task Force Reports and the 1997 State Bar of Michigan Report. Each member of the justice system and the legal profession should attend at least one training session that discusses the conclusions and recommendations. Courses should be developed at the Michigan Judicial Institute, the Institute of Continuing Legal Education and all Michigan law schools that examine gender and race/ethnic issues as they affect the justice system. Women and minorities should be included in all phases of the educational process as committee members, planners, faculty and speakers. Ethics, substantive law courses and seminars should regularly include discussion of the nature and impact of bias and discrimination on the profession.

THE JOINT COMMISSION PROPOSAL

It is clear that the single most important factor identified by the Task Force regarding realization of the 1989 Report goals is the creation of a permanent implementation effort. It was the

opinion of the membership of the 1989 Task Forces and it is the opinion of the members of the State Bar Task Force that “If the battle against bias is to be vigorously pursued and eventually won, the Supreme Court must lead the effort.” (1989 Task Force Reports, Gender at p. 132) Fundamental to the implementation proposal are the following factors: (1) continued leadership on the part of the Supreme Court; (2) an administrative structure which possesses sole responsibility and oversight for the realization of the Report’s recommendations and the development of new initiatives; (3) a research and evaluation methodology which identifies the extent and success of the ‘Task Forces’ educational efforts, the extent and success of the implementation of the specific recommendations, and the extent and success of the reduction of bias in the courts; and (4) the allocation of sufficient resources to the effort.

Therefore, the State Bar Task Force proposes the creation of a Joint Commission on Diversity Issues and the Michigan Justice System by the Michigan Supreme Court and the State Bar of Michigan. The Commission should not only work to implement the 1989 recommendations, but should place special emphasis on the conclusions and recommendations of the State Bar Task Force and expand the scope of its inquiry to fairness and diversity issues, in general. The Commission should identify substantive areas of investigation which were not addressed by the 1989 Task Force, and adopt a plan for developing findings and new recommendations.

PRIORITY GOALS FOR THE FUTURE

While each recommendation and goal set forth in this document is important, the State Bar Task Force believes that that some recommendations should be given special attention and emphasis. In addition to the joint recommendations discussed above, several issues were identified by the Task Force members as necessary and fundamental to the appearance of fairness and equal treatment and the achievement of a truly bias-free and non-discriminatory justice system. These included the following:

Domestic Violence Coordinating Councils: The Task Force believes that the continued creation of local and statewide coordinating councils is essential to the considerable success of the domestic violence reforms that have been adopted over the last eight years. Councils should be required in every county to establish effective procedures relating to the processing and resolution of domestic violence cases.

Prosecutorial Responsibility for Personal Protection Orders: Great progress has been made in the availability and effectiveness of personal protection orders in domestic violence cases. However, personal protection order statutes and court rules should be amended to provide that prosecuting attorneys be encouraged and allowed to assist applicants in obtaining personal protection orders in addition to their statutory obligation to enforce personal protection violations, when other assistance is not available and unless a conflict exists. Increased responsibility also should be supported through adequate funding.

Evaluation of the Impact of MCR 2.404 on Mediation Practices: By order of the Michigan Supreme Court dated March 5, 1997, the Michigan Court Rules were amended to adopt a new rule regulating the selection process for mediation panels. The rule specifically requires that the mediation process be free from race, ethnic and gender bias. The State Court Administrative Office will have the responsibility to evaluate the first annual reports filed by the chief judges pursuant to MCR 2.404 (D)(1) to determine the extent of compliance, and the impact of the court rule amendment on increasing the number of women and minority mediators. Not only should the State Court Administrative Office function as a clearinghouse for this information, it should also be empowered to regulate, enforce and sanction non-compliance.

Regulation and Supervision of Private Mediation and Alternative Dispute Resolution Systems: Regulation and supervision of mediation and alternative dispute resolution procedures should be extended to all private contractual dispute resolution services which are used to resolve legal disputes.

Recruitment and Retention of Women and Minority Faculty in Law Schools: Law schools should adopt and follow policies aimed at the recruitment, advancement toward tenure and retention of women and minority faculty members. Out-of-state schools with good records in recruiting and retaining tenured women and minority faculty should be studied and their policies adapted to Michigan law schools. Statistics should be collected which accurately reflect the recruitment, employment and tenure patterns of law schools over an extended period of time.

Appointment and Hiring Policies and Practices in the Michigan Justice System: Progress must continue toward a representational bench and bar. The Governor should appoint more women and minorities to judicial positions at all levels and in jurisdictions throughout the state. Courts should appoint referees, magistrates and *quasi*-judicial personnel in numbers which accurately reflect the racial/ethnic and gender demographics of the populations they serve. Representation should be

increased in the offices of the Attorney General, State Public Administrators Office, Prosecutor's offices and in the disciplinary systems. The number of minorities hired as law clerks, judicial assistants and commissioners should be increased at all levels of the judiciary, but particularly at the Court of Appeals and Supreme Court levels. Women and minorities should continue to be appointed, elected and hired into positions of authority and leadership in the State Bar of Michigan.

Mandatory Legal Education and Court Appointed Counsel: In accordance with the State Bar recommendation on MCLE, a system of mandatory legal education in the area of family law and family violence should be developed for judges and attorneys. Until a statewide mandatory continuing legal education standard is adopted, each Circuit Court-Family Division should adopt minimum continuing legal education standards for appointment in that jurisdiction. Any attorney appointments out of the family division should be given only to attorneys who have complied with these requirements. Referrals from bar associations regarding family matters should be consistent with these requirements.

Court Personnel Training: Quality training programs on race, ethnic and gender bias issues should be provided to all levels of court personnel. The Task Force recommends that funding for "on site" programs be increased in order to enable the Michigan Judicial Institute to fully implement this recommendation.

State Court Administrative Office Regulation and Enforcement: The Supreme Court should develop specific standards related to court administration and race/ethnic and gender bias. A mechanism for monitoring administrative compliance with Supreme Court standards should be developed. The State Court Administrative Office, at the direction of the Chief Justice of the Michigan Supreme Court, should be given the authority to review local court operations and make recommendations for improvements when necessary. This authority should include the ability to mandate adoption of internal administrative policies and procedures, which will enhance the fair and equitable delivery of justice to all citizens.

"One Court of Justice" Funding Issues for the Future: The Michigan legislature should recognize the authority of the Supreme Court of Michigan under the separation of powers doctrine. It should support the Supreme Court in the implementation of "One Court of Justice" and facilitate standardized administrative delivery systems and uniform, equitable enforcement of gender-neutral policies and management practices. The legislature should fully fund all mandated requirements placed on state courts.

NOTEWORTHY ACCOMPLISHMENTS

The State Bar Task Force wishes to recognize and acknowledge many of the organizations that have worked over the last eight years to comply with and implement the goals set forward in the 1989 Reports. In many instances, these achievements were done completely voluntarily and without additional financial resources or personnel. The **Michigan Judicial Institute** has consistently and comprehensively designed its educational curriculum to reflect the recommendations of the 1989 Task Force as they relate to the education of judges and court personnel. The **Prosecuting Attorneys Association of Michigan/Prosecuting Attorneys Coordinating Council/Domestic Violence Prevention and Treatment Board/State Court Administrative Office** have joined together to initiate significant reforms in the attitude about and the approach to domestic violence in Michigan. Of particular note is the progress achieved in the availability of personal protection orders. The **State Bar of Michigan** has responded to the challenge of the 1989 Reports by establishing a Department for an Open Justice System. During the last eight years, this department has dedicated its efforts to the implementation of numerous 1989 Task Force recommendations.

Throughout the state, **Friends of the Court** offices have struggled to respond to the growing needs of their constituency. They have been mandated to increase enforcement and collection efforts on child support, enforce parenting time requirements, utilize increased conciliation and mediation techniques, establish non-traditional office hours and standardize judicial recommendations. Despite the serious funding issues for these offices, many Friends of the Court reported serious efforts to address these concerns and to adopt innovative programs.

As a result of recommendations by the State Bar of Michigan Standing Committee on Standard Criminal Jury Instructions and the Michigan Supreme Court Standard Jury Instructions Committee, civil and criminal jury instructions were amended to adopt consistently gender neutral language in almost all provisions and commentary. The **Michigan State Bar Foundation** has demonstrated a long commitment to supporting the efforts of the 1989 Task Forces and the State Bar Task Force, providing financial support for the 1997 project. **The State Bar of Michigan Representative Assembly** adopted proposed revisions to the Code of Judicial Conduct, Michigan Court Rule 9.205 and the Code of Professional Conduct. These proposals were generated as a result of the 1989 recommendations and were a courageous and controversial action taken by the policy-setting body of the State Bar of Michigan.

The **Michigan Supreme Court** has provided leadership and guidance on the issues of bias and discrimination in the justice system of Michigan beginning with the Citizen's Commission to Improve Michigan's Courts in 1986. The establishment of the 1989 Task Forces and the Court's subsequent support of its findings and recommendations have been essential to the efforts for reform. Under its direction, the **State Court Administrator's Office** and the **Michigan Judicial Institute** have accomplished much toward the realization of the goals set forth in 1989. The **State Court Administrative** Office has provided invaluable support to the courts of this state in addressing the concerns of the 1989 Reports and providing administrative resources and guidance in their implementation.

CONCLUSION

The Task Force is aware that it answers its mandate and completes its work at a time of great national sensitivity to race/ethnic and gender issues. We are confident that there is nothing in the accomplishment of our mandate that infringes upon the rights of any individual or any group; asks for unequal and preferential treatment for unqualified persons; or places an unfair burden upon organizations within our profession. To the contrary, the reporting of the status of the 1989 Supreme Court Task Forces' recommendations, and our recommendations for further implementation, go a long way toward increasing the quality of justice and credibility of the Michigan judicial system.

The appearance of bias, as well as the reality of bias, damages our profession and our courts in their fundamental role as protector of freedom and dispenser of justice. In a very real sense, the implementation of these recommendations continues the process of insuring that the Michigan justice system accurately reflects the diversity of the constituency it serves, and that participants at all levels are afforded a level playing field upon which to operate. As we continue to strive for a bias-free society and justice system, lawyers, judges and their leaders must be in the forefront of this effort. This report, coupled with the 1989 Reports, will provide the members of our justice system with the knowledge and awareness needed to more ably continue this elusive undertaking.